SOUTHERN DISTRICT OF NEW YORK	x
HARVEY & COMPANY LLC, Plaintiff, -against-	Case No. 16-cv-3553 (SHS) (RWL) ECF Case
MIDOCEAN US ADVISOR, LP,	· :
Defendant.	· : :
	X

DEFENDANT MIDOCEAN US ADVISOR, LP'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

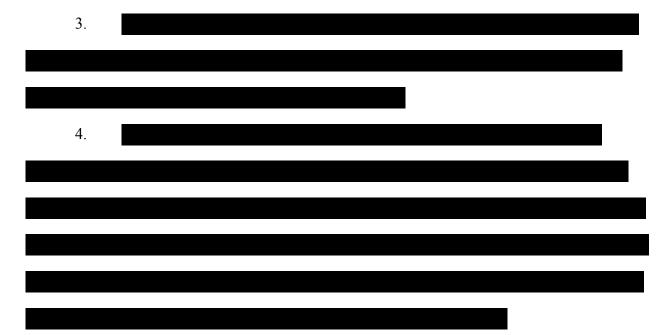
Pursuant to Local Civil Rule 56.1, and in support of its motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, Defendant MidOcean US Advisor, LP ("MidOcean") respectfully submits this Statement of Undisputed Material Facts as to which it contends there is no genuine issue to be tried. Citations in support of this Statement are to the respective Exhibits attached to the Declaration of Daniel H. Tabak, dated December 15, 2017 ("Tabak Decl.") filed in support of MidOcean's Motion for Summary Judgment.

MidOcean and Harvey Execute a Contract

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1. In August 2011, MidOcean retained Harvey & Company LLC ("Harvey") to assist MidOcean in making acquisitions. Tabak Decl., Ex. A (August 2011 Harvey-MidOcean contract ("Contract")) Preamble & § 1.

2.



- 5. Section 1 of the Contract generally provides that only "obligations incurred hereunder as of the expiration of the Term shall continue in full force and effect following such termination." Tabak Decl., Ex. A (Contract) § 1. Termination is effective on the last day of the month in which notice of termination is provided. *Id*.
- 6. MidOcean agreed to pay Harvey a monthly \$5,000 retainer to compensate Harvey for its services. *Id*.
- 7. This retainer was to be applied against any cash success fees that Harvey might earn. *Id.* § 4.
- 8. In addition, Harvey could also earn three forms of compensation upon the closing of a transaction between MidOcean and a company introduced to it by Harvey (a "Target Company"): a cash fee, an equity fee, and equity options. *Id.* §§ 4, 5.1, 5.3.
- 9. Under Section 4 of the Contract, Harvey could earn a cash "Transaction Fee" upon the closing of a transaction with a Target Company. *Id.* § 4.
 - 10. The cash Transaction Fee has a two-year "extension clause" or "tail" provision:

As compensation for Harvey's successful performance of the services described in Section 2 above, upon the closing of a transaction with a Target Company, *provided the closing is within two years of the date the Target Company was Last Introduced* (as defined below), Harvey shall receive a "Transaction Fee"...

Id. § 4 (emphasis modified).

11. The Contract defines "Last Introduced" as follows:

"Last Introduced" means, with respect to a Target Company, the date of [(1)] the most recent communication from Harvey to [MidOcean] during the Term *providing new or updated material information* (excluding publicly available information such as SEC filings) possessed by Harvey with respect to acquiring such Target Company *which leads directly to substantial discussions* between [MidOcean] and such Target Company *regarding a transaction*, or [(2)] the most recent date of *substantive discussions* during the Term initiated by Harvey between [MidOcean] or its affiliates and such Target Company *regarding a transaction*.

Id. § 4 (emphasis added).

- 12. The equity interests Harvey could earn upon the closing of a transaction with a Target Company are governed by Section 5 of the Contract. *Id.* §§ 5.1, 5.3; Tabak Decl., Ex. D (Compl.) ¶ 16.
 - 13. The equity fee section provides:

Upon the closing of a transaction with a Target Company, [MidOcean] shall cause Harvey or its designee . . . to receive a two percent (2.0%) equity interest . . . in the legal entity through which the transaction is to be conducted

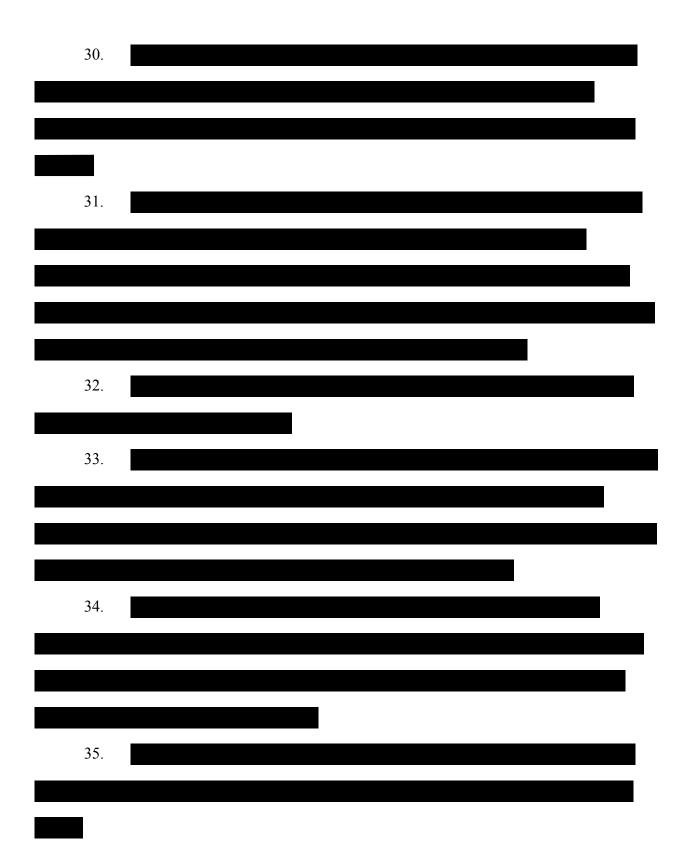
Tabak Decl., Ex. A (Contract) § 5.1 (emphasis added).

14. The Contract also provided Harvey a limited option to purchase equity securities of "up to five percent (5.0%) of the equity investment being made by [MidOcean] and its coinvestors." *Id.* § 5.3.

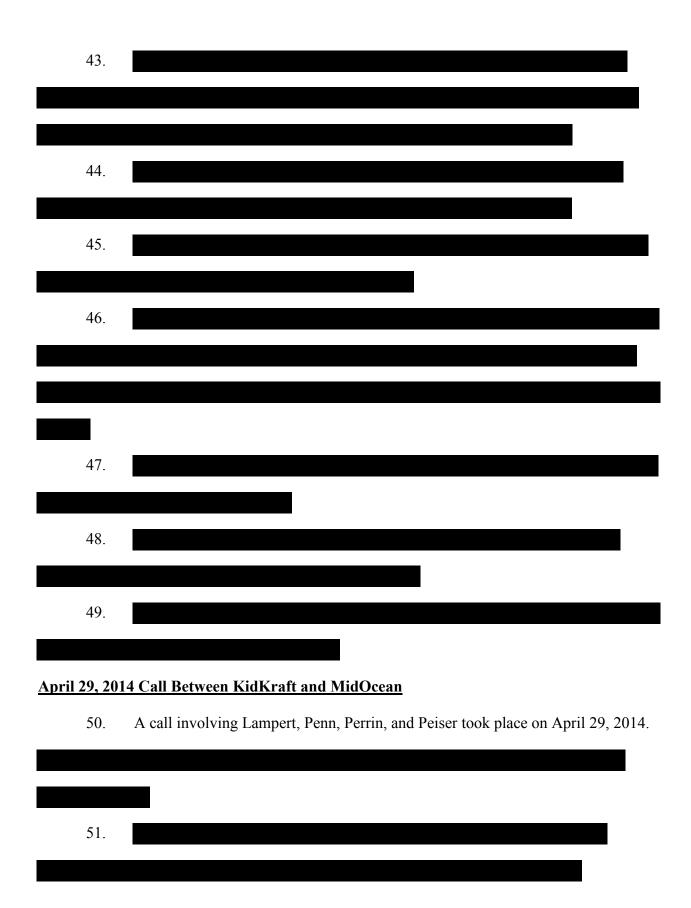
15. MidOcean's obligation to offer the option under Section 5.3 arose only "upon the closing of a transaction with a Target Company." *Id*.

Harvey Com	munications with KidKraft Prior to Call Between KidKraft and MidOcean
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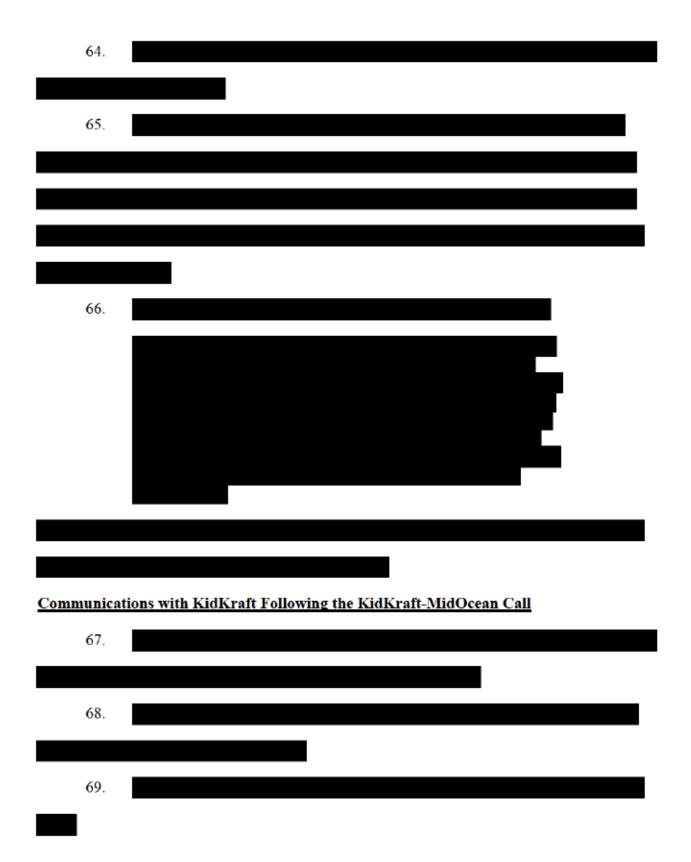
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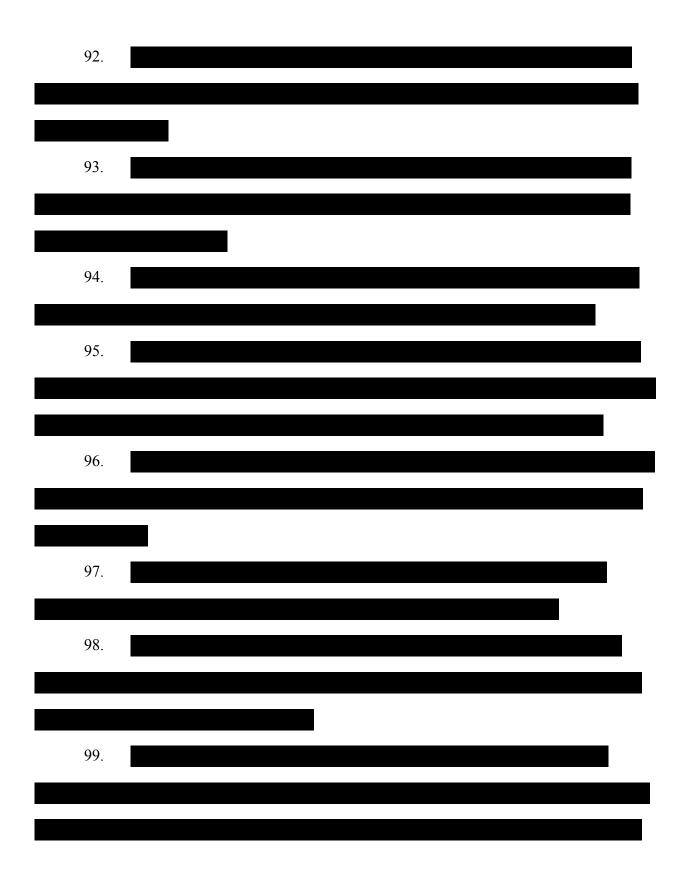
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54.	The April 29, 2014 call lasted about 45 minutes.
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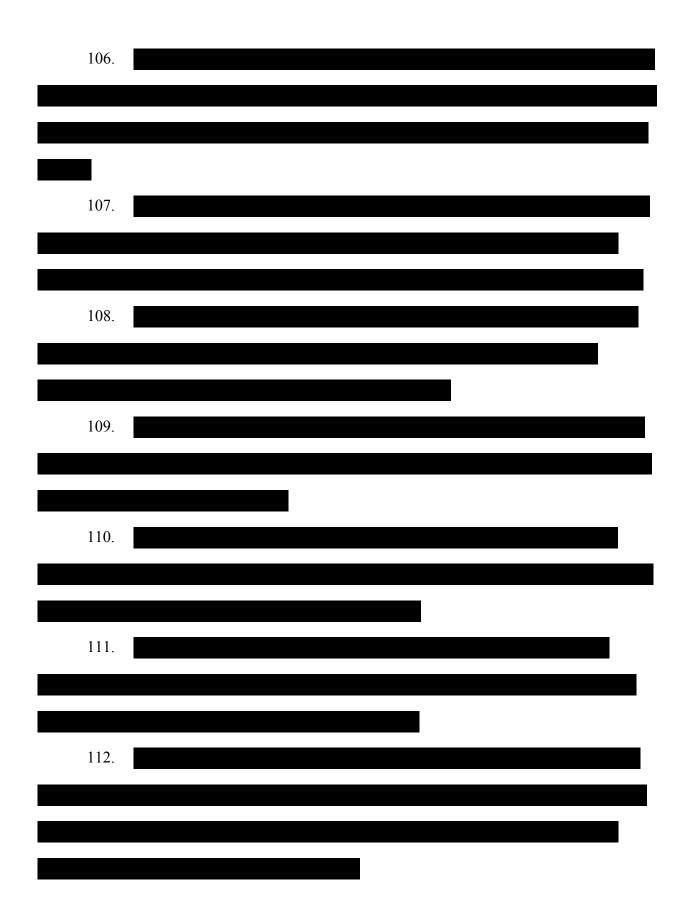
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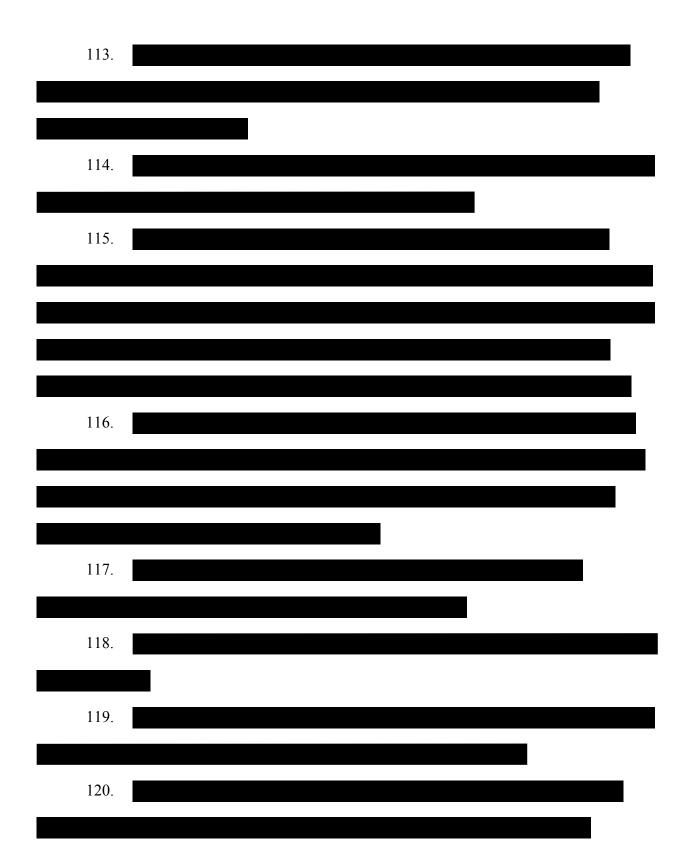
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80.	On or about July 16, 2014, MidOcean terminated the Contract.
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Fall 2014 Breakfast Meeting Between KidKraft and MidOcean Prior to Auction 85. 86. 87. 88. 89. 90. 91.



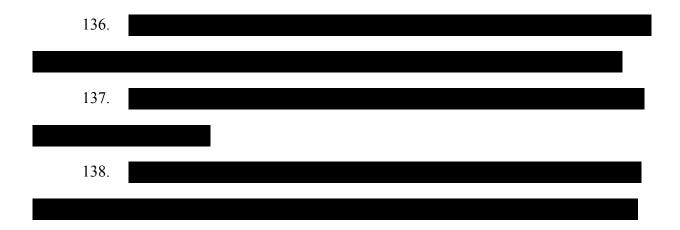
Formal Kidk	Craft Auction Process		
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Dated: December 15, 2017 New York, New York

Respectfully submitted,

COHEN & GRESSER LLP

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